

Amendments to House Bill No. 125
2nd Reading/2nd House Copy

Requested by Senator Donald Steinbeisser

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo
March 15, 2011 (8:53am)

1. Title, page 1, line 9.

Following: "INSURERS;"

Insert: "REVISING THE DEFINITION OF "INSURER" RELATING TO CAPTIVE
RISK RETENTION GROUPS;"

2. Title, page 1, line 16.

Following: "33-2-601,"

Insert: "33-2-1501,"

3. Page 5.

Following: line 20

Insert: "Section 8. Section 33-2-1501, MCA, is amended to read:

"33-2-1501. **Definitions.** As used in parts 15 through 17 of
this chapter, the following definitions apply:

(1) "Accredited state" means a state in which the
department of insurance or regulatory agency has qualified as
meeting the minimum financial regulatory standards promulgated
and established from time to time by the national association of
insurance commissioners.

(2) "Actuary" means a person who is a member in good
standing of the American academy of actuaries.

(3) "Captive insurer" means:

(a) an insurer that is owned by another entity and whose
exclusive purpose is to insure risks of the parent entity and its
affiliates; or

(b) in the case of a group or association, an insurer that
is owned by the member insureds and whose exclusive purpose is to
insure risks to member insureds and their affiliates.

(4) "Control" or "controlled" has the meaning defined in
33-2-1101.

(5) "Controlled insurer" means an authorized insurer that
is controlled, directly or indirectly, by a producer.

(6) "Controlling person" means a person, firm, association,
or corporation that has the power to direct or cause to be
directed the management, control, or activities of a reinsurance
intermediary.

(7) "Controlling producer" means a producer who, directly
or indirectly, controls an insurer.

(8) (a) "Insurer" means any person, firm, association, or
corporation authorized, under Title 33, chapter 2, part 1, to

transact insurance business in this state.

(b) ~~The~~ With regard to part 15 only, the following are not insurers:

(i) risk retention groups as defined in:

(A) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986);

(B) the Liability Risk Retention Act of 1986, 15 U.S.C. 3901, et seq.; or

(C) Title 33, chapter 11, part 1;

(ii) residual market pools and joint underwriting authorities or associations; or

(iii) captive insurers.

(c) With regard to parts 16 and 17, captive insurers are not insurers but captive risk retention groups are insurers.

(9) "Licensed producer" means a producer or reinsurance intermediary licensed pursuant to this title.

(10) (a) "Managing general agent" means a person who:

(i) manages all or part of the insurance business of an insurer and acts as an agent for the insurer;

(ii) either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross written premiums equal to or more than 5% of the policyholder surplus in any quarter or year; and

(iii) engages in one or more of the following activities on the business produced:

(A) adjustment or payment of claims in excess of an amount determined by the commissioner; or

(B) negotiation of reinsurance on behalf of the insurer.

(b) Notwithstanding the provisions of subsection (10) (a), the following persons are not considered managing general agents:

(i) an employee of the insurer;

(ii) a manager of the United States branch of an alien insurer;

(iii) an underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, is subject to Title 33, chapter 2, part 11, and whose compensation is not based solely on the value of premiums written; or

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or an interinsurance exchange under powers of attorney.

(11) "NAIC" means the national association of insurance commissioners.

(12) "Producer" means an insurance producer or reinsurance intermediary authorized or licensed pursuant to this title.

(13) (a) "Qualified United States financial institution" means a financial institution that:

(i) is organized or licensed under the laws of the United States or any state;

(ii) is regulated, supervised, and examined by federal or

state authorities having regulatory authority over banks and trust companies and that either:

(A) is determined by the commissioner to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit are acceptable to the commissioner; or

(B) is eligible to act as a fiduciary of a trust or has been granted authority to operate with fiduciary powers.

(b) For purposes of this definition, the commissioner may by rule adopt standards of financial condition and standing that may be developed from time to time by the securities valuation office of the NAIC.

(14) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager.

(15) "Reinsurance intermediary-broker" means a person, other than an officer or employee of the ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(16) (a) "Reinsurance intermediary-manager" means a person who:

(i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

(ii) acts as an agent for the reinsurer, whether known as a reinsurance intermediary-manager, manager, or other similar term.

(b) The following persons are not considered reinsurance intermediary-managers with respect to the reinsurer:

(i) an employee of the reinsurer;

(ii) a manager of the United States branch of an alien reinsurer;

(iii) an underwriting manager who, pursuant to contract, manages all of the reinsurance operations of the reinsurer, is under common control with the reinsurer, is subject to Title 33, chapter 2, part 11, and whose compensation is not based on the volume of premiums written; or

(iv) a person who manages groups, associations, pools, or organizations of insurers that engage in joint underwriting or joint reinsurance and that are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(17) "Reinsurer" means a person, firm, association, or corporation licensed in this state under this title as an insurer with authority to assume reinsurance.

(18) "Underwrite" means the authority to accept or reject risk on behalf of the insurer."

{Internal References to 33-2-1501:

33-4-101 x 33-17-102 x}"

Renumber: subsequent sections